

REFERENCE TITLE: **sentencing; natural life imprisonment**

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

## **SB 1062**

Introduced by  
Senator Waring

AN ACT

AMENDING SECTIONS 13-703, 13-703.04, 13-713 AND 13-1105, ARIZONA REVISED STATUTES; AMENDING SECTION 13-703.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 3; AMENDING SECTION 13-703.01, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2005, CHAPTER 325, SECTION 4; RELATING TO SENTENCING; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-703, Arizona Revised Statutes, is amended to  
3 read:

4 13-703. Sentence of death or natural life imprisonment;  
5 aggravating and mitigating circumstances; definition

6 A. If the state has filed a notice of intent to seek the death penalty  
7 and the defendant is convicted of first degree murder as defined in section  
8 13-1105, the defendant shall be sentenced to death or imprisonment in the  
9 custody of the state department of corrections for ~~life or~~ natural life as  
10 determined and in accordance with the procedures provided in section  
11 13-703.01. A defendant who is sentenced to natural life is not eligible for  
12 commutation, parole, work furlough, work release or release from confinement  
13 on any basis. ~~If the defendant is sentenced to life, the defendant shall not~~  
14 ~~be released on any basis until the completion of the service of twenty-five~~  
15 ~~calendar years if the murdered person was fifteen or more years of age and~~  
16 ~~thirty-five years if the murdered person was under fifteen years of age or~~  
17 ~~was an unborn child.~~ In this section, for purposes of punishment an unborn  
18 child shall be treated like a minor who is under twelve years of age.

19 B. At the aggravation phase of the sentencing proceeding that is held  
20 pursuant to section 13-703.01, the admissibility of information relevant to  
21 any of the aggravating circumstances set forth in subsection F of this  
22 section shall be governed by the rules of evidence applicable to criminal  
23 trials. The burden of establishing the existence of any of the aggravating  
24 circumstances set forth in subsection F of this section is on the  
25 prosecution. The prosecution must prove the existence of the aggravating  
26 circumstances beyond a reasonable doubt.

27 C. At the penalty phase of the sentencing proceeding that is held  
28 pursuant to section 13-703.01, the prosecution or the defendant may present  
29 any information that is relevant to any of the mitigating circumstances  
30 included in subsection G of this section, regardless of its admissibility  
31 under the rules governing admission of evidence at criminal trials. The  
32 burden of establishing the existence of the mitigating circumstances included  
33 in subsection G of this section is on the defendant. The defendant must  
34 prove the existence of the mitigating circumstances by a preponderance of the  
35 evidence. If the trier of fact is a jury, the jurors do not have to agree  
36 unanimously that a mitigating circumstance has been proven to exist. Each  
37 juror may consider any mitigating circumstance found by that juror in  
38 determining the appropriate penalty.

39 D. Evidence that is admitted at the trial and that relates to any  
40 aggravating or mitigating circumstances shall be deemed admitted as evidence  
41 at a sentencing proceeding if the trier of fact considering that evidence is  
42 the same trier of fact that determined the defendant's guilt. The  
43 prosecution and the defendant shall be permitted to rebut any information  
44 received at the aggravation or penalty phase of the sentencing proceeding and  
45 shall be given fair opportunity to present argument as to whether the

1 information is sufficient to establish the existence of any of the  
2 circumstances included in subsections F and G of this section.

3 E. In determining whether to impose a sentence of death or **NATURAL**  
4 life imprisonment, the trier of fact shall take into account the aggravating  
5 and mitigating circumstances that have been proven. The trier of fact shall  
6 impose a sentence of death if the trier of fact finds one or more of the  
7 aggravating circumstances enumerated in subsection F of this section and then  
8 determines that there are no mitigating circumstances sufficiently  
9 substantial to call for leniency.

10 F. The trier of fact shall consider the following aggravating  
11 circumstances in determining whether to impose a sentence of death:

12 1. The defendant has been convicted of another offense in the United  
13 States for which under Arizona law a sentence of life imprisonment or death  
14 was imposable.

15 2. The defendant has been or was previously convicted of a serious  
16 offense, whether preparatory or completed. Convictions for serious offenses  
17 committed on the same occasion as the homicide, or not committed on the same  
18 occasion but consolidated for trial with the homicide, shall be treated as a  
19 serious offense under this paragraph.

20 3. In the commission of the offense the defendant knowingly created a  
21 grave risk of death to another person or persons in addition to the person  
22 murdered during the commission of the offense.

23 4. The defendant procured the commission of the offense by payment, or  
24 promise of payment, of anything of pecuniary value.

25 5. The defendant committed the offense as consideration for the  
26 receipt, or in expectation of the receipt, of anything of pecuniary value.

27 6. The defendant committed the offense in an especially heinous, cruel  
28 or depraved manner.

29 7. The defendant committed the offense while:

30 (a) In the custody of or on authorized or unauthorized release from  
31 the state department of corrections, a law enforcement agency or a county or  
32 city jail.

33 (b) On probation for a felony offense.

34 8. The defendant has been convicted of one or more other homicides, as  
35 defined in section 13-1101, that were committed during the commission of the  
36 offense.

37 9. The defendant was an adult at the time the offense was committed or  
38 was tried as an adult and the murdered person was under fifteen years of age,  
39 was an unborn child in the womb at any stage of its development or was  
40 seventy years of age or older.

41 10. The murdered person was an on duty peace officer who was killed in  
42 the course of performing the officer's official duties and the defendant  
43 knew, or should have known, that the murdered person was a peace officer.

1 11. The defendant committed the offense with the intent to promote,  
2 further or assist the objectives of a criminal street gang or criminal  
3 syndicate or to join a criminal street gang or criminal syndicate.

4 12. The defendant committed the offense to prevent a person's  
5 cooperation with an official law enforcement investigation, to prevent a  
6 person's testimony in a court proceeding, in retaliation for a person's  
7 cooperation with an official law enforcement investigation or in retaliation  
8 for a person's testimony in a court proceeding.

9 13. The offense was committed in a cold, calculated manner without  
10 pretense of moral or legal justification.

11 14. The defendant used a remote stun gun or an authorized remote stun  
12 gun in the commission of the offense. For the purposes of this paragraph:

13 (a) "Authorized remote stun gun" means a remote stun gun that has all  
14 of the following:

15 (i) An electrical discharge that is less than one hundred thousand  
16 volts and less than nine joules of energy per pulse.

17 (ii) A serial or identification number on all projectiles that are  
18 discharged from the remote stun gun.

19 (iii) An identification and tracking system that, on deployment of  
20 remote electrodes, disperses coded material that is traceable to the  
21 purchaser through records that are kept by the manufacturer on all remote  
22 stun guns and all individual cartridges sold.

23 (iv) A training program that is offered by the manufacturer.

24 (b) "Remote stun gun" means an electronic device that emits an  
25 electrical charge and that is designed and primarily employed to incapacitate  
26 a person or animal either through contact with electrodes on the device  
27 itself or remotely through wired probes that are attached to the device or  
28 through a spark, plasma, ionization or other conductive means emitting from  
29 the device.

30 G. The trier of fact shall consider as mitigating circumstances any  
31 factors proffered by the defendant or the state that are relevant in  
32 determining whether to impose a sentence less than death, including any  
33 aspect of the defendant's character, propensities or record and any of the  
34 circumstances of the offense, including but not limited to the following:

35 1. The defendant's capacity to appreciate the wrongfulness of his  
36 conduct or to conform his conduct to the requirements of law was  
37 significantly impaired, but not so impaired as to constitute a defense to  
38 prosecution.

39 2. The defendant was under unusual and substantial duress, although  
40 not such as to constitute a defense to prosecution.

41 3. The defendant was legally accountable for the conduct of another  
42 under the provisions of section 13-303, but his participation was relatively  
43 minor, although not so minor as to constitute a defense to prosecution.

44 4. The defendant could not reasonably have foreseen that his conduct  
45 in the course of the commission of the offense for which the defendant was

1 convicted would cause, or would create a grave risk of causing, death to  
2 another person.

3 5. The defendant's age.

4 H. For THE purposes of determining whether a conviction of any  
5 dangerous crime against children is a serious offense pursuant to this  
6 section, an unborn child shall be treated like a minor who is under twelve  
7 years of age.

8 I. For the purposes of this section, "serious offense" means any of  
9 the following offenses if committed in this state or any offense committed  
10 outside this state that if committed in this state would constitute one of  
11 the following offenses:

12 1. First degree murder.

13 2. Second degree murder.

14 3. Manslaughter.

15 4. Aggravated assault resulting in serious physical injury or  
16 committed by the use, threatened use or exhibition of a deadly weapon or  
17 dangerous instrument.

18 5. Sexual assault.

19 6. Any dangerous crime against children.

20 7. Arson of an occupied structure.

21 8. Robbery.

22 9. Burglary in the first degree.

23 10. Kidnapping.

24 11. Sexual conduct with a minor under fifteen years of age.

25 12. Burglary in the second degree.

26 13. Terrorism.

27 Sec. 2. Section 13-703.01, Arizona Revised Statutes, as amended by  
28 Laws 2005, chapter 325, section 3, is amended to read:

29 13-703.01. Sentences of death or natural life; imposition;  
30 sentencing proceedings; definitions

31 A. If the state has filed a notice of intent to seek the death penalty  
32 and the defendant is convicted of first degree murder, the trier of fact at  
33 the sentencing proceeding shall determine whether to impose a sentence of  
34 death in accordance with the procedures provided in this section. If the  
35 trier of fact determines that a sentence of death is not appropriate, or if  
36 the state has not filed a notice of intent to seek the death penalty, and the  
37 defendant is convicted of first degree murder, the court shall ~~determine~~  
38 ~~whether to~~ impose a sentence of ~~life or~~ natural life.

39 B. Before trial, the prosecution shall notice one or more of the  
40 aggravating circumstances under section 13-703, subsection F.

41 C. If the trier of fact finds the defendant guilty of first degree  
42 murder, the trier of fact shall then immediately determine whether one or  
43 more alleged aggravating circumstances have been proven. This proceeding is  
44 the aggravation phase of the sentencing proceeding.

1 D. If the trier of fact finds that one or more of the alleged  
2 aggravating circumstances have been proven, the trier of fact shall then  
3 immediately determine whether the death penalty should be imposed. This  
4 proceeding is the penalty phase of the sentencing proceeding.

5 E. At the aggravation phase, the trier of fact shall make a special  
6 finding on whether each alleged aggravating circumstance has been proven  
7 based on the evidence that was presented at the trial or at the aggravation  
8 phase. If the trier of fact is a jury, a unanimous verdict is required to  
9 find that the aggravating circumstance has been proven. If the trier of fact  
10 unanimously finds that an aggravating circumstance has not been proven, the  
11 defendant is entitled to a special finding that the aggravating circumstance  
12 has not been proven. If the trier of fact unanimously finds no aggravating  
13 circumstances, the court shall then ~~determine whether to~~ impose a sentence of  
14 ~~life or~~ natural life on the defendant.

15 F. The penalty phase shall be held immediately after the trier of fact  
16 finds at the aggravation phase that one or more of the aggravating  
17 circumstances under section 13-703, subsection F have been proven. A finding  
18 by the trier of fact that any of the remaining aggravating circumstances  
19 alleged has not been proven or the inability of the trier of fact to agree on  
20 the issue of whether any of the remaining aggravating circumstances alleged  
21 has been proven shall not prevent the holding of the penalty phase.

22 G. At the penalty phase, the defendant and the state may present any  
23 evidence that is relevant to the determination of whether there is mitigation  
24 that is sufficiently substantial to call for leniency. In order for the  
25 trier of fact to make this determination, the state may present any evidence  
26 that demonstrates that the defendant should not be shown leniency.

27 H. The trier of fact shall determine unanimously whether death is the  
28 appropriate sentence. If the trier of fact is a jury and the jury  
29 unanimously determines that the death penalty is not appropriate, the court  
30 shall ~~determine whether to~~ impose a sentence of ~~life or~~ natural life.

31 I. If the trier of fact at any prior phase of the trial is the same  
32 trier of fact at the subsequent phase, any evidence that was presented at any  
33 prior phase of the trial shall be deemed admitted as evidence at any  
34 subsequent phase of the trial.

35 J. At the aggravation phase, if the trier of fact is a jury, the jury  
36 is unable to reach a verdict on any of the alleged aggravating circumstances  
37 and the jury has not found that at least one of the alleged aggravating  
38 circumstances has been proven, the court shall dismiss the jury and shall  
39 impanel a new jury. The new jury shall not retry the issue of the  
40 defendant's guilt or the issue regarding any of the aggravating circumstances  
41 that the first jury found not proved by unanimous verdict. If the new jury  
42 is unable to reach a unanimous verdict, the court shall impose a sentence of  
43 ~~life or~~ natural life on the defendant.

44 K. At the penalty phase, if the trier of fact is a jury and the jury  
45 is unable to reach a verdict, the court shall dismiss the jury and shall

1 impanel a new jury. The new jury shall not retry the issue of the  
 2 defendant's guilt or the issue regarding any of the aggravating circumstances  
 3 that the first jury found by unanimous verdict to be proved or not  
 4 proved. If the new jury is unable to reach a unanimous verdict, the court  
 5 shall impose a sentence of ~~life or~~ natural life on the defendant.

6 L. If the jury that rendered a verdict of guilty is not the jury first  
 7 impaneled for the aggravation phase, the jury impaneled in the aggravation  
 8 phase shall not retry the issue of the defendant's guilt. If the jury  
 9 impaneled in the aggravation phase is unable to reach a verdict on any of the  
 10 alleged aggravating circumstances and the jury has not found that at least  
 11 one of the alleged aggravating circumstances has been proven, the court shall  
 12 dismiss the jury and shall impanel a new jury. The new jury shall not retry  
 13 the issue of the defendant's guilt or the issue regarding any of the  
 14 aggravating circumstances that the first jury found not proved by unanimous  
 15 verdict. If the new jury is unable to reach a unanimous verdict, the court  
 16 shall impose a sentence of ~~life or~~ natural life on the defendant.

17 M. Alternate jurors who are impaneled for the trial in a case in which  
 18 the offense is punishable by death shall not be excused from the case until  
 19 the completion of the sentencing proceeding.

20 N. If the sentence of a person who was sentenced to death is  
 21 overturned, the person shall be resentenced pursuant to this section by a  
 22 jury that is specifically impaneled for this purpose as if the original  
 23 sentencing had not occurred.

24 O. In any case that requires sentencing or resentencing in which the  
 25 defendant has been convicted of an offense that is punishable by death and in  
 26 which the trier of fact was a judge or a jury that has since been discharged,  
 27 the defendant shall be sentenced or resentenced pursuant to this section by a  
 28 jury that is specifically impaneled for this purpose.

29 P. The trier of fact shall make all factual determinations required by  
 30 this section or the Constitution of the United States or this state to impose  
 31 a death sentence. If the defendant bears the burden of proof, the issue  
 32 shall be determined in the penalty phase. If the state bears the burden of  
 33 proof, the issue shall be determined in the aggravation phase.

34 ~~Q. If the death penalty was not alleged or was alleged but not  
 35 imposed, the court shall determine whether to impose a sentence of life or  
 36 natural life. In determining whether to impose a sentence of life or natural  
 37 life, the court:~~

38 ~~1. May consider any evidence introduced before sentencing or at any  
 39 other sentencing proceeding.~~

40 ~~2. Shall consider the aggravating and mitigating circumstances listed  
 41 in section 13-702 and any statement made by a victim.~~

42 ~~R.~~ Q. Subject to the provisions of section 13-703, subsection B, a  
 43 victim has the right to be present at the aggravation phase and to present  
 44 any information that is relevant to the proceeding. A victim has the right  
 45 to be present and to present information at the penalty phase. At the

1 penalty phase, the victim may present information about the murdered person  
2 and the impact of the murder on the victim and other family members and may  
3 submit a victim impact statement in any format to the trier of fact.

4 ~~S.~~ R. For the purposes of this section:

5 1. "Trier of fact" means a jury unless the defendant and the state  
6 waive a jury, in which case the trier of fact shall be the court.

7 2. "Victim" means the murdered person's spouse, parent, child,  
8 grandparent or sibling, any other person related to the murdered person by  
9 consanguinity or affinity to the second degree or any other lawful  
10 representative of the murdered person, except if the spouse, parent, child,  
11 grandparent, sibling, other person related to the murdered person by  
12 consanguinity or affinity to the second degree or other lawful representative  
13 is in custody for an offense or is the accused.

14 Sec. 3. Section 13-703.01, Arizona Revised Statutes, as amended by  
15 Laws 2005, chapter 325, section 4, is amended to read:

16 13-703.01. Sentences of death or natural life; imposition;  
17 sentencing proceedings; definitions

18 A. If the state has filed a notice of intent to seek the death penalty  
19 and the defendant is convicted of first degree murder, the trier of fact at  
20 the sentencing proceeding shall determine whether to impose a sentence of  
21 death in accordance with the procedures provided in this section. If the  
22 trier of fact determines that a sentence of death is not appropriate, or if  
23 the state has not filed a notice of intent to seek the death penalty, and the  
24 defendant is convicted of first degree murder, the court shall ~~determine~~  
25 ~~whether to~~ impose a sentence of ~~life or~~ natural life.

26 B. Before trial, the prosecution shall notice one or more of the  
27 aggravating circumstances under section 13-703, subsection F.

28 C. If the trier of fact finds the defendant guilty of first degree  
29 murder, the trier of fact shall then immediately determine whether one or  
30 more alleged aggravating circumstances have been proven. This proceeding is  
31 the aggravation phase of the sentencing proceeding.

32 D. If the trier of fact finds that one or more of the alleged  
33 aggravating circumstances have been proven, the trier of fact shall then  
34 immediately determine whether the death penalty should be imposed. This  
35 proceeding is the penalty phase of the sentencing proceeding.

36 E. At the aggravation phase, the trier of fact shall make a special  
37 finding on whether each alleged aggravating circumstance has been proven  
38 based on the evidence that was presented at the trial or at the aggravation  
39 phase. If the trier of fact is a jury, a unanimous verdict is required to  
40 find that the aggravating circumstance has been proven. If the trier of fact  
41 unanimously finds that an aggravating circumstance has not been proven, the  
42 defendant is entitled to a special finding that the aggravating circumstance  
43 has not been proven. If the trier of fact unanimously finds no aggravating  
44 circumstances, the court shall then ~~determine whether to~~ impose a sentence of  
45 ~~life or~~ natural life on the defendant.

1 F. The penalty phase shall be held immediately after the trier of fact  
2 finds at the aggravation phase that one or more of the aggravating  
3 circumstances under section 13-703, subsection F have been proven. A finding  
4 by the trier of fact that any of the remaining aggravating circumstances  
5 alleged has not been proven or the inability of the trier of fact to agree on  
6 the issue of whether any of the remaining aggravating circumstances alleged  
7 has been proven shall not prevent the holding of the penalty phase.

8 G. At the penalty phase, the defendant and the state may present any  
9 evidence that is relevant to the determination of whether there is mitigation  
10 that is sufficiently substantial to call for leniency. In order for the  
11 trier of fact to make this determination, **REGARDLESS OF WHETHER THE DEFENDANT**  
12 **PRESENTS EVIDENCE OF MITIGATION**, the state may present any evidence that  
13 demonstrates that the defendant should not be shown leniency **INCLUDING ANY**  
14 **EVIDENCE REGARDING THE DEFENDANT'S CHARACTER, PROPENSITIES, CRIMINAL RECORD**  
15 **OR OTHER ACTS.**

16 H. The trier of fact shall determine unanimously whether death is the  
17 appropriate sentence. If the trier of fact is a jury and the jury  
18 unanimously determines that the death penalty is not appropriate, the court  
19 shall ~~determine whether to~~ impose a sentence of ~~life or~~ natural life.

20 I. If the trier of fact at any prior phase of the trial is the same  
21 trier of fact at the subsequent phase, any evidence that was presented at any  
22 prior phase of the trial shall be deemed admitted as evidence at any  
23 subsequent phase of the trial.

24 J. At the aggravation phase, if the trier of fact is a jury, the jury  
25 is unable to reach a verdict on any of the alleged aggravating circumstances  
26 and the jury has not found that at least one of the alleged aggravating  
27 circumstances has been proven, the court shall dismiss the jury and shall  
28 impanel a new jury. The new jury shall not retry the issue of the  
29 defendant's guilt or the issue regarding any of the aggravating circumstances  
30 that the first jury found not proved by unanimous verdict. If the new jury  
31 is unable to reach a unanimous verdict, the court shall impose a sentence of  
32 ~~life or~~ natural life on the defendant.

33 K. At the penalty phase, if the trier of fact is a jury and the jury  
34 is unable to reach a verdict, the court shall dismiss the jury and shall  
35 impanel a new jury. The new jury shall not retry the issue of the  
36 defendant's guilt or the issue regarding any of the aggravating circumstances  
37 that the first jury found by unanimous verdict to be proved or not proved.  
38 If the new jury is unable to reach a unanimous verdict, the court shall  
39 impose a sentence of ~~life or~~ natural life on the defendant.

40 L. If the jury that rendered a verdict of guilty is not the jury first  
41 impaneled for the aggravation phase, the jury impaneled in the aggravation  
42 phase shall not retry the issue of the defendant's guilt. If the jury  
43 impaneled in the aggravation phase is unable to reach a verdict on any of the  
44 alleged aggravating circumstances and the jury has not found that at least  
45 one of the alleged aggravating circumstances has been proven, the court shall

1 dismiss the jury and shall impanel a new jury. The new jury shall not retry  
2 the issue of the defendant's guilt or the issue regarding any of the  
3 aggravating circumstances that the first jury found not proved by unanimous  
4 verdict. If the new jury is unable to reach a unanimous verdict, the court  
5 shall impose a sentence of ~~life or~~ natural life on the defendant.

6 M. Alternate jurors who are impaneled for the trial in a case in which  
7 the offense is punishable by death shall not be excused from the case until  
8 the completion of the sentencing proceeding.

9 N. If the sentence of a person who was sentenced to death is  
10 overturned, the person shall be resentenced pursuant to this section by a  
11 jury that is specifically impaneled for this purpose as if the original  
12 sentencing had not occurred.

13 O. In any case that requires sentencing or resentencing in which the  
14 defendant has been convicted of an offense that is punishable by death and in  
15 which the trier of fact was a judge or a jury that has since been discharged,  
16 the defendant shall be sentenced or resentenced pursuant to this section by a  
17 jury that is specifically impaneled for this purpose.

18 P. The trier of fact shall make all factual determinations required by  
19 this section or the Constitution of the United States or this state to impose  
20 a death sentence. If the defendant bears the burden of proof, the issue  
21 shall be determined in the penalty phase. If the state bears the burden of  
22 proof, the issue shall be determined in the aggravation phase.

23 ~~Q. If the death penalty was not alleged or was alleged but not  
24 imposed, the court shall determine whether to impose a sentence of life or  
25 natural life. In determining whether to impose a sentence of life or natural  
26 life, the court:~~

27 ~~1. May consider any evidence introduced before sentencing or at any  
28 other sentencing proceeding.~~

29 ~~2. Shall consider the aggravating and mitigating circumstances listed  
30 in section 13-702 and any statement made by a victim.~~

31 ~~R.~~ Q. Subject to the provisions of section 13-703, subsection B, a  
32 victim has the right to be present at the aggravation phase and to present  
33 any information that is relevant to the proceeding. A victim has the right  
34 to be present at the penalty phase. At the penalty phase, the victim has the  
35 right to be heard pursuant to section 13-4426.

36 ~~S.~~ R. For the purposes of this section:

37 1. "Trier of fact" means a jury unless the defendant and the state  
38 waive a jury, in which case the trier of fact shall be the court.

39 2. "Victim" means the murdered person's spouse, parent, child,  
40 grandparent or sibling, any other person related to the murdered person by  
41 consanguinity or affinity to the second degree or any other lawful  
42 representative of the murdered person, except if the spouse, parent, child,  
43 grandparent, sibling, other person related to the murdered person by  
44 consanguinity or affinity to the second degree or other lawful representative  
45 is in custody for an offense or is the accused.

1           Sec. 4. Section 13-703.04, Arizona Revised Statutes, is amended to  
2 read:

3           13-703.04. Death sentences; supreme court review

4           A. The supreme court shall review all death sentences. On review, the  
5 supreme court shall independently review the trial court's findings of  
6 aggravation and mitigation and the propriety of the death sentence.

7           B. If the supreme court determines that an error was made regarding a  
8 finding of aggravation or mitigation, the supreme court shall independently  
9 determine if the mitigation the supreme court finds is sufficiently  
10 substantial to warrant leniency in light of the existing aggravation. If the  
11 supreme court finds that the mitigation is not sufficiently substantial to  
12 warrant leniency, the supreme court shall affirm the death sentence. If the  
13 supreme court finds that the mitigation is sufficiently substantial to  
14 warrant leniency, the supreme court shall impose a **NATURAL** life sentence  
15 pursuant to section 13-703, subsection A.

16           C. The independent review required by subsection A **OF THIS SECTION**  
17 does not preclude the supreme court from remanding a case for further action  
18 if the trial court erroneously excluded evidence or if the appellate record  
19 does not adequately reflect the evidence presented.

20           Sec. 5. Section 13-713, Arizona Revised Statutes, is amended to read:

21           13-713. Third or subsequent offenses by violent or aggravated  
22           offenders; sentencing; natural life imprisonment;  
23           definition

24           A. Unless a longer term of imprisonment or death is the prescribed  
25 penalty and notwithstanding any provision that establishes a shorter term of  
26 imprisonment, a person who has been convicted of committing or attempting or  
27 conspiring to commit any violent or aggravated felony and who has previously  
28 been convicted on separate occasions of two or more violent or aggravated  
29 felonies not committed on the same occasion shall be sentenced to  
30 imprisonment for **NATURAL** life and is not eligible for suspension of sentence,  
31 probation, pardon or release on any basis ~~except that the person may be~~  
32 ~~eligible for commutation after the person has served at least thirty five~~  
33 ~~years.~~

34           B. In order for the penalty under subsection A of this section to  
35 apply, both of the following must occur:

36           1. The aggravated or violent felonies that comprise the prior  
37 convictions shall have been entered within fifteen years of the conviction  
38 for the third offense, not including time spent in custody or on probation  
39 for an offense or while the person is an absconder.

40           2. The sentence for the first aggravated or violent felony conviction  
41 shall have been imposed before the conduct occurred that gave rise to the  
42 second conviction, and the sentence for the second aggravated or violent  
43 felony conviction shall have been imposed before the conduct occurred that  
44 gave rise to the third conviction.

45           C. Chapter 3 of this title applies to all offenses under this section.

1 D. For the purposes of this section, if a person has been convicted of  
2 an offense committed in another jurisdiction that if committed in this state  
3 would be a violation or attempted violation of any of the offenses listed in  
4 this section and that has the same elements of an offense listed in this  
5 section, the offense committed in another jurisdiction is considered an  
6 offense committed in this state.

7 E. For the purposes of this section, "violent or aggravated felony"  
8 means any of the following offenses:

- 9 1. First degree murder.
- 10 2. Second degree murder.
- 11 3. Aggravated assault resulting in serious physical injury or  
12 involving the discharge, use or threatening exhibition of a deadly weapon or  
13 dangerous instrument.
- 14 4. Dangerous or deadly assault by prisoner.
- 15 5. Committing assault with intent to incite to riot or participate in  
16 riot.
- 17 6. Drive by shooting.
- 18 7. Discharging a firearm at a residential structure if the structure  
19 is occupied.
- 20 8. Kidnapping.
- 21 9. Sexual conduct with a minor that is a class 2 felony.
- 22 10. Sexual assault.
- 23 11. Molestation of a child.
- 24 12. Continuous sexual abuse of a child.
- 25 13. Violent sexual assault.
- 26 14. Burglary in the first degree committed in a residential structure  
27 if the structure is occupied.
- 28 15. Arson of an occupied structure.
- 29 16. Arson of an occupied jail or prison facility.
- 30 17. Armed robbery.
- 31 18. Participating in or assisting a criminal syndicate or leading or  
32 participating in a criminal street gang.
- 33 19. Terrorism.
- 34 20. Taking a child for the purpose of prostitution.
- 35 21. Child prostitution.
- 36 22. Commercial sexual exploitation of a minor.
- 37 23. Sexual exploitation of a minor.
- 38 24. Unlawful introduction of disease or parasite as prescribed by  
39 section 13-2912, subsection A, paragraph 2 or 3.

40 Sec. 6. Section 13-1105, Arizona Revised Statutes, is amended to read:

41 13-1105. First degree murder; classification

42 A. A person commits first degree murder if:

- 43 1. Intending or knowing that the person's conduct will cause death,  
44 the person causes the death of another person, including an unborn child,

1 with premeditation or, as a result of causing the death of another person  
2 with premeditation, causes the death of an unborn child.

3 2. Acting either alone or with one or more other persons the person  
4 commits or attempts to commit sexual conduct with a minor under section  
5 13-1405, sexual assault under section 13-1406, molestation of a child under  
6 section 13-1410, terrorism under section 13-2308.01, marijuana offenses under  
7 section 13-3405, subsection A, paragraph 4, dangerous drug offenses under  
8 section 13-3407, subsection A, paragraphs 4 and 7, narcotics offenses under  
9 section 13-3408, subsection A, paragraph 7 that equal or exceed the statutory  
10 threshold amount for each offense or combination of offenses, involving or  
11 using minors in drug offenses under section 13-3409, kidnapping under section  
12 13-1304, burglary under section 13-1506, 13-1507 or 13-1508, arson under  
13 section 13-1703 or 13-1704, robbery under section 13-1902, 13-1903 or  
14 13-1904, escape under section 13-2503 or 13-2504, child abuse under section  
15 13-3623, subsection A, paragraph 1, ~~or~~ or unlawful flight from a pursuing law  
16 enforcement vehicle under section 28-622.01 and, in the course of and in  
17 furtherance of the offense or immediate flight from the offense, the person  
18 or another person causes the death of any person.

19 3. Intending or knowing that the person's conduct will cause death to  
20 a law enforcement officer, the person causes the death of a law enforcement  
21 officer who is in the line of duty.

22 B. Homicide, as prescribed in subsection A, paragraph 2 of this  
23 section, requires no specific mental state other than what is required for  
24 the commission of any of the enumerated felonies.

25 C. An offense under subsection A, paragraph 1 of this section applies  
26 to an unborn child in the womb at any stage of its development. A person  
27 shall not be prosecuted under subsection A, paragraph 1 of this section if  
28 any of the following applies:

29 1. The person was performing an abortion for which the consent of the  
30 pregnant woman, or a person authorized by law to act on the pregnant woman's  
31 behalf, has been obtained or for which the consent was implied or authorized  
32 by law.

33 2. The person was performing medical treatment on the pregnant woman  
34 or the pregnant woman's unborn child.

35 3. The person was the unborn child's mother.

36 D. First degree murder is a class 1 felony and is punishable by death  
37 or **NATURAL** life imprisonment as provided by sections 13-703 and 13-703.01.

38 Sec. 7. Conditional enactment

39 Section 13-703.01, Arizona Revised Statutes, as amended by Laws 2005,  
40 chapter 325, section 4 and this act, does not take effect unless the  
41 condition prescribed by Laws 2003, chapter 255, section 8, relating to victim  
42 sentencing recommendations, is met.